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In the Supreme Court of the United States

OCTOBER TERM 1958

NO. 956

A. CRAWFORD GREENE and WELLS FARGO BANK & UNION TRUST CO., a corporation, as Executors Under the Last Will and Testament of Gordon Blanding, Deceased, and as Trustees of the Trusts Created Under said Last Will and Testament and by Decree of Final Distribution of The Estate of Said Decedent Dated December 14, 1948,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Respondent.

Petition for Writ of Certiorari to The United States Court of Claims

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This case raises for the first time in any court the question of whether Congress intended that the estate of an owner of Panama Canal Bonds should pay a federal estate tax on the bonds, bearing in mind that the bonds provide

> "The principal and interest are exempt from all taxes or duties of the United States as well as from taxation

in any form by or under State, Municipal or local authority".

The Court of Claims sustained the tax on the theory that a federal estate tax rests not "on" the bonds but "on" the transfer of the bonds at death. But

(a) The legislative history of the tax exemption clause makes it clear that Congress intended that the bonds and the bondholders should be exempt from all taxes including estate taxes and regardless of whether an estate tax is considered to be "on" the property or "on" the transfer of the property.

(b) When, subsequent to the sale of the Panama Canal Bonds, Congress changed its policy and decided to make government bonds subject to federal estate taxation it amended the tax exemption clause to say so.

Moreover, the bondholders are entitled to have the bond contract read in accordance with the ordinary meaning of its language. No one reading that the bonds "are exempt from all taxes or duties of the United States" could possibly understand that the bondholder must nevertheless pay estate taxes. Fundamentally the question here is as simple as this: Will the Government be honest with the bond buying public?

OPINIONS

The opinion of the Court of Claims is reported at 171 F. Supp. 459. It is printed as Appendix A.

JURISDICTION

This petition asks review by certiorari under the provisions of 28 U.S.C. 1255 of the decision and judgment of the Court of Claims dated March 4, 1959.

QUESTIONS PRESENTED

1. Did Congress intend when it authorized Panama Canal Bonds providing

> "The principal and interest are exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, Municipal or local authority"

that the estate of the bondholder should pay a federal estate tax because of the bonds?

2. What is the effect of the provision of the bond contract, read in accordance with the ordinary meaning of the language, that the principal and interest of the bonds "are exempt from all taxes or duties of the United States"?

3. If the tax exemption clause, read in accordance with the ordinary meaning of the language, provides that the bonds and the bondholders are to be free of estate taxes, may the Government consistently with Due Process collect an estate tax because of the bonds?

STATUTES INVOLVED

(a) Section 39 of the Act of August 5, 1909 (36 Stat. 11, 117) provides:

> "Sec. 39. That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures on account of the Panama Canal and to reimburse the Treasury for such expenditures already made and not covered by previous issues of bonds, the sum of two hundred and ninety million five hundred and sixty-nine thousand dollars (which sum together with the eighty-four million six hundred and thirty-one thousand nine hundred dollars already borrowed upon issues of two per cent bonds under section eight of the Act of June twenty-eight, nineteen hundred and two, equals the estimate

of the Isthmian Canal Commission to cover the entire cost of the Canal from its inception to its completion), and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of one hundred dollars, five hundred dollars, and one thousand dollars, payable fifty years from the date of issue, and bearing interest payable quarterly in gold coin at a rate not exceeding three per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: Provided, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same; and the authority contained in section eight of the Act of June twenty-eighth, nineteen hundred and two, for the issue of bonds bearing interest at two per centum per annum, is hereby repealed."

(b) The Act of February 4, 1910 (36 Stat. 192) provides:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any bonds and certificates of indebtedness of the United States hereafter issued shall be payable, principal and interest, in United States gold coin of the present standard of value; and that such bonds may be issued in such denominations as may be prescribed by the Secretary of the Treasury.

"Sec. 2. That any certificates of indebtedness hereafter issued shall be exempt from all taxes or duties of the United States, as well as from taxation in any form

by or under state, municipal, or local authority; and that a sum not exceeding one-tenth of one per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same.

"Sec. 3. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

(c) The Act of March 2, 1911 (36 Stat. 1013) provides:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized to insert in the bonds to be issued by him under section thirty-nine of an Act entitled 'An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' approved August fifth, nineteen hundred and nine, a provision that such bonds shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks; and the bonds containing such provision shall not be receivable for that purpose."

STATEMENT OF THE CASE

Gordon Blanding, a San Francisco lawyer, died in San Francisco on September 11, 1945.* He owned when he died United States 3% Panama Canal Bonds dated June 1, 1911, with an aggregate par value of $1,432,600. These bonds were issued pursuant to the provisions of the Act of August 5, 1909 (36 Stat. 11, 117) as amended by the Acts of February 4, 1910 (36 Stat. 192) and March 2, 1911 (36 Stat. 1013) providing in part

"* * * the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well

*The facts are stipulated.

> as from taxation in any form by or under State, municipal or local authority * * *"

and each of these bonds carries on its face the following provision:

> "The principal and interest are exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, Municipal or local authority."†

Petitioners, as executors, paid under protest an estate tax increased in the amount of $1,113,937.37 by reason of the inclusion of the Panama Canal Bonds in the tax computation. Petitioners then filed a timely claim for refund of the tax thus paid and when the refund claim was denied brought suit in the Court of Claims under the provisions of 28 U.S.C. 1491.

On March 4, 1959 the Court of Claims gave judgment for the United States. Chief Judge Jones wrote the opinion with Judges Laramore and Whitaker concurring. Judge Madden concurred in the result because he felt that the court was "not free to inquire as to the intent of Congress in view of the Supreme Court decisions discussed in the opinion of the Court".

REASONS FOR GRANTING THE WRIT

The reasons why this writ should issue are these:

(a) This Court has never reviewed the legislative history of the tax exemption clause. That legislative history shows that the bonds and the bondholders were to be free of all taxes, including death duties.

(b) The bond, read in accordance with the ordinary meaning of its language, provides an exemption from all taxes, including estate taxes, and as thus construed

†A copy of the bond appears as Appendix B.

the bondholder is entitled to Due Process protection. This contention has never been reviewed by this Court.

(c) The question of the applicability of the federal estate tax to government bonds issued between 1870 and 1917 is an important issue which should be settled. Nothing except a decision by this Court will settle that question.

Since nothing about this case can be thoroughly understood except as the legislative history of the tax exemption clause is thoroughly understood, the argument below begins with a review of that legislative history.

1. Congress Intended to Exempt Panama Canal Bonds from All Taxes, Including Estate Taxes.

The Panama Canal Bonds were authorized and sold during the period from 1870 to 1917 when it was the settled policy of Congress to make government bonds free of all taxes, including death duties, thus making it possible to sell the bonds at low interest rates. Since the purpose of Congress was to make the bonds attractive to purchasers, Congress intended and provided that the bonds should be tax free in the ordinary sense: that no taxes of any kind, including estate taxes, should be paid on account of the bonds. This decision in favor of tax free, low interest government bonds was made by Congress in connection with the Act of July 14, 1870 (16 Stat. 272), the act by which Congress funded the Civil War debt and put it on a long term basis. Since the average rate of interest on the short term securities issued during the Civil War was at least 6.62% (C. F. Childs, *Concerning U.S. Government Securities*, p. 39) and since Congress was undertaking to replace these securities with long term bonds with an average interest rate of about 4.5%, the Treasury was faced with a difficult problem in

salesmanship and every effort was made to make the bonds attractive on the world money market. To this end the bonds were made tax free on the theory that the saving in interest would more than offset any loss in taxes (41 Cong. Globe 1591, 1594).

On any fair reading of the tax exemption clause and its legislative history there is no doubt that the bonds were intended to be free of estate taxes as well as all other taxes. In 1870 when Congress adopted the tax exemption clause which was to become a standard feature of government securities until 1917, Congress was thoroughly familiar with federal inheritance taxes (12 Stat. 432, 485; 13 Stat. 218, 285; 16 Stat. 256, 269) and indeed the critical phrase in the tax exemption clause "all taxes or duties of the United States", phrased as it is in the alternative "taxes *or* duties", is a quotation from federal inheritance tax legislation (12 Stat. 432, 485, 486; 13 Stat. 218, 285, 286; 16 Stat. 256, 269). Moreover, in both the Senate and the House there was vigorous opposition to the tax exemption clause on the ground that by this clause Congress was surrendering all power to tax in connection with the bonds (41 Cong. Globe 1878, 1879; 41 Cong. Globe 5018, 5022, 5024).*

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*See, for example, the remarks of

Congressman Mayham:

"It is true that it is not proposed that this bill shall cover the entire bonded debt of the country; but it does propose to cover $1,000,000,000 of that debt, and to that extent to allow the holders of the securities of the Government to be entirely free from all kinds of taxation. * * *" (41 Cong. Globe 5021)

Congressman Woodward:

"Sir, it is an alienation of the constitutional power of the Federal Legislature to levy and collect taxes, and I deny that this Congress has the right to alienate, give away, or in any manner part with any of its constitutional powers." (41 Cong. Globe 5022)

Congressman Holman:

"I do not believe that the people of this country are willing that the Government should abandon the power of taxation." (41 Cong. Globe 5024)

The proponents of the tax exemption clause did not deny that such was the effect of the tax exemption provision. They argued instead that the saving in interest would more than offset the loss in taxes (41 Cong. Globe 1591, 1594, 1878; 41 Cong. Globe 5023, 5024).† No one on either side of the debate suggested that if the tax exemption clause were adopted it would nevertheless be possible for the government to collect some taxes, such as inheritance or estate taxes, in connection with the bonds. The 1870 decision was a perfectly deliberate, carefully considered decision whereby for the sake of saving interest Congress surrendered all power to tax in connection with government bonds. This decision remained a fundamental principle of government finance from 1870 until 1917 and World War I (see, for example, 30 Stat. 448, 466-7; 31 Stat. 45, 46; 36 Stat. 192). It was therefore in full effect in 1909 (36 Stat. 117) and 1911 (36 Stat. 1013) when the Panama Canal Bonds were authorized and accordingly the traditional tax exemption clause was adopted for the Panama Canal Bonds without debate.

†See, for example, the remarks of

Senator Sherman:

"No one could raise the question of taxing a bond bearing so low a rate as these, on which the taxes are so plainly discounted and reserved in advance by the United States. The only wonder is that some such measure as this was not adopted long ago." (41 Cong. Globe 1594).

Senator Wilson:

"If you go into the markets of the world and propose to borrow money, reserving the right of the Federal Government to tax, you have immediately got to pay the burden of that reservation." (41 Cong. Globe 1878).

Congressman Butler:

"But the question now presented to us is, what sort of a bond shall we issue to diminish our interest and fund our debt at a lower rate? Shall we issue a four per cent. bond subject to taxation? It might, reasonably be said, 'No one will take a bond at a rate of interest so much lower than the ordinary rate, if this interest is to be subject to taxation.' By exempting these bonds from taxation we discount our taxes in our interest." (41 Cong. Globe 5024).

In 1917 because of the money demands created by World War I, Congress changed its policy and decided to make government bonds subject to estate taxes. This required a revision in the text of the tax exemption clause and the phrase "except inheritance or estate taxes" was added as a qualification to the general prohibition against taxation. See section 1 of the Act of April 24, 1917 (40 Stat. 35), the act which authorized the so-called First Liberty Loan:

> "The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege." (40 Stat. 35)

Each of the succeeding Liberty Loans contained comparable provisions. (See 40 Stat. 288, 291; 40 Stat. 502; 40 Stat. 965.)* Since 1917, government bonds, generally speaking, have been subject to federal taxation and accordingly the tax exemption clause appearing in the Panama Canal Bonds no longer regularly appears in government securities.

The Government argues and a majority of the Court of Claims apparently agrees that the legislative record is equivocal and unpersuasive because in the debates on the Act of July 14, 1870 the reference, by way of illustration, was to income taxes rather than estate taxes. It is perhaps true that Congress on occasion has expressed a murky purpose in murky language, but never, it seems safe to say, has Congress been so befuddled that seeking to say "income

*But compare 40 Stat. 1309, 1311 where, since Congress did not intend that nonresident aliens should pay estate taxes, Congress with respect to such aliens used the traditional tax exemption clause without the modification in favor of estate and inheritance taxation. See *Jandorf's Estate v. Commissioner*, 171 F 2d 464, 467 (C.A. 2d 1948).

taxes of the United States" it has said instead "all taxes or duties of the United States". Congress was seeking to sell bonds—not to collect taxes—and there is not a line in the legislative record to support the suggestion that the phrase "all taxes or duties of the United States" was somehow intended to be "all income taxes of the United States". Nor does the Government have any explanation as to why, if Congress did not intend to foreclose estate taxation on government bonds, it became necessary upon the change in policy in 1917 to amend the tax exemption clause to include a specific exception, "except estate or inheritance taxes".

Fundamentally the Government relies not on the legislative record but on the doctrine of the decisions of this Court that an estate tax, strictly speaking, is not "on" the property of the decedent but "on" the transfer of that property at death. This is settled constitutional doctrine which has nothing to do with the question now before the Court. Under Article I, Section 2, Clause 3 of the Constitution, all direct taxes to be valid must be apportioned among the states in accordance with population. In *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895) this Court held that an income tax was such a direct tax. Five years later in *Knowlton v. Moore*, 178 U.S. 41 (1900) this Court held, after an elaborate historical analysis, that an inheritance tax was not a direct tax but a duty on the transfer of property at death. However sound this rule may be for purposes of construing the Constitution and as the shop talk of lawyers and judges, it has nothing to do with the problem before the Court. That problem is not a problem in legal analysis or constitutional construction. The problem is the simple one of determining what Congress intended by the tax exemption clause. And if there is one thing more certain than any other about the legislative history of that clause it is certain that Congress made no distinction

between taxes on property and taxes on the transfer of property—even if one were to assume that someone in Congress had heard of this distinction and, having heard of it, understood it.

The failure to distinguish between a question about the meaning of the phrase "direct taxes" in the Constitution and a question about the meaning of the tax exemption clause as employed by Congress accounts for *Murdock v. Ward*, 178 U.S. 139 (1900). *Murdock* holds that the tax exemption clause appearing in the Act of July 14, 1870 does not forbid a federal inheritance tax on government bonds. *Murdock* was decided on the very day that the Court decided *Knowlton v. Moore*, 178 U.S. 41 and *Plummer v. Coler*, 178 U.S. 115. In *Knowlton* the Court held that the federal inheritance tax need not be apportioned since it was a death duty on the transfer of property rather than a direct tax on that property. In *Plummer* the Court held that the tax exemption clause appearing in the Act of July 14, 1870 did not protect the bonds from a New York inheritance tax since the New York tax was on the transfer of the bonds at death, a transfer which was possible only because state law so provided and which was, therefore, an event which the state could tax. These decisions were reason enough, thought the Court, for concluding in *Murdock* that the tax exemption clause provided no protection against a federal inheritance tax. *Murdock* is simply wrong. It is wrong because the Court decided a question about the intent of Congress in reliance upon an imported theory as to the nature of an inheritance tax as an indirect tax which need not be apportioned, and upon the analogy of a state inheritance tax based upon the state's retained power to condition inheritance, and the result was reached without even a glance at the legislative record to determine what Congress

actually intended.* *Murdock* ought to be overruled but if that is asking too much it can readily be distinguished. For when *Murdock* was decided in 1900 the Court could not know that in 1917 when Congress decided to make government bonds subject to estate taxation it would amend the tax exemption clause so to provide. This is reason enough for refusing to follow *Murdock* and the Court of Appeals for the Second Circuit so held in *Jandorf's Estate v. Commissioner*, 171 F.2d 464, 467 (C.A. 2d 1948). See also *Pennsylvania Company for Banking & Trusts v. United States*, 185 F.2d 125 (C.A. 3d 1950). The 1917 action of Congress is a plain demonstration of the changing intent of Congress with respect to estate taxation of government bonds. It is also a plain demonstration of the error of *Murdock*.

Finally the Government relies on the fact that when the Panama Canal Bonds were authorized in 1909 and 1911, *Murdock* had already been decided. The Government argues that by adopting for the Panama Canal Bonds the tax exemption clause before the Court in *Murdock*, Congress adopted the construction put on that clause by the *Murdock* decision. This Court has, however, on more than one occasion warned against the easy assumption that by re-enacting legislation Congress adopts the judicial construction of that legislation. See *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); *Helvering v. N.Y. Trust Co.*, 292 U.S. 455 (1934). The fact is, as a glance at the Congressional Record will demonstrate, that Congress did not have the *Murdock* decision before it when the Panama Canal Bonds were authorized. Congress, when it authorized the traditional tax exemption clause for the Panama Canal

*The briefs filed in *Murdock* do not refer to the legislative history of the Act of July 14, 1870 and no reference to the history of that Act appears in the opinion of the Court.

Bonds, was simply following the settled Congressional policy in favor of a public debt represented by tax free, low interest bonds. If Congress had adopted the *Murdock* ruling as an acceptable construction of the tax exemption clause, there would have been no occasion to modify that clause when in 1917 Congress decided to permit estate taxation in connection with government bonds.

2. The Bond Is a Contract to be Interpreted in Accordance with the Ordinary Meaning of the Language and as Thus Interpreted the Bondholder Is Entitled to Due Process Protection.

Each Panama Canal Bond is a contract between the bondholder and the United States. The provisions of the bond, like the provisions of any contract, must be read in accordance with the ordinary meaning of the language. Compare *United States v. Wurts*, 303 U.S. 414, 417 (1938); *Railroad Companies v. Schutte*, 103 U.S. 118, 140 (1881). What, according to the ordinary meaning of the language, is to be understood from the bond provision that the principal and interest of the bonds "are exempt from all taxes or duties of the United States"? Does this mean that the principal and interest are exempt from all taxes except estate taxes? Or from all taxes except transfer taxes? Or does it mean what it says? Petitioners submit that to read into the broad language of the tax exemption clause an exception for estate taxes is to put the Government in the business of deceiving the public. Test it this way: Suppose a private corporation were to issue a bond providing that the issuer would pay all taxes or duties of the United States on the bond. Who would contend that the issuer was not obligated to pay estate taxes as well as all other taxes? Or suppose the S. E. C. was called upon to approve such a bond knowing that the issuer did not intend to pay estate taxes. Can anyone suppose that the S. E. C. would fail to require a

modification of the bond language to state the exception? The position of Congress is both clear and honest. When Congress decided that government bonds should be exempt from all taxation, Congress said so. And when Congress decided that government bonds should be exempt from all taxation except estate taxes, Congress once again said so. But the position of the Government in this case is not honest. The Government seeks to read into the plain language of the tax exemption clause an exception which is not there and to make of that clause a trap for any unwary bondholder who in his innocence believes that the Government of the United States, if no one else, can be trusted to deal fairly.

For many years and beginning as far back as *The Legal Tender Cases*, 12 Wall. 457 (1871) this Court has emphasized the importance in all matters affecting the public credit of punctilious performance by the Government of its contractual obligations. "In authorizing the Congress to borrow money, the Constitution empowers the Congress to fix the amount to be borrowed and the terms of payment. By virtue of the power to borrow money 'on the credit of the United States,' the Congress is authorized to pledge that credit as an assurance of payment as stipulated,—as the highest assurance the Government can give, its plighted faith. To say that the Congress may withdraw or ignore that pledge, is to assume that the Constitution contemplates a vain promise, a pledge having no other sanction than the pleasure and convenience of the pledgor. This Court has given no sanction to such a conception of the obligations of our Government." *Perry v. United States*, 294 U.S. 330, 351 (1935). See also *Lynch v. United States*, 292 U.S. 571 (1934); *United States v. Northern Pacific Ry. Co.*, 256 U.S. 51 (1921); *United States v. Central Pacific R.R. Co.*, 118 U.S. 235 (1886); *Cooke v. United States*, 91 U.S.

389 (1875); *The Century Indemnity Company v. United States*, 236 F.2d 752 (C.A. D.C. 1956).

Here as on other occasions government officials unfamiliar with the decisions made by their predecessors and the reasons for those decisions, seek, perhaps unwittingly, to repudiate the commitments of the United States and thus to impair the credit and good standing of the Government in the money markets of the world. This, the Court has never been willing to tolerate and it should not be tolerated now. Congress, obviously enough, has made every effort to be fair and candid. Believing for many years that it was in the best interest of the United States to make government bonds tax-free, thereby making it possible to sell those bonds at low interest rates, Congress provided in plain language an exemption from all taxation. When beginning in 1917 Congress changed its policy and concluded that government bonds should be subject to taxation, Congress in equally plain language wrote an exception into the tax exemption clause. This Court should respect the Congressional purpose and see to it that the United States abides by the Congressional mandate.

3. The Issue Presented by This Case Is Substantial and Important and Only a Decision by This Court Will Prevent Further Litigation of That Issue.

Subsequent to *Murdock v. Ward*, 178 U.S. 139 (1900) and subsequent to the action of Congress in 1917 in modifying the traditional tax exemption provision in government bonds to provide for estate taxation, there has been no decision by this Court as to the meaning of a tax exemption clause phrased in the broad language "all taxes or duties of the United States." It is stipulated that this clause or its equivalent appears in $49,800,000 of Panama Canal Bonds outstanding on October 31, 1956 and in the following bonds

which on November 20, 1956 were outstanding in the following amounts:

Loan	*Amount Outstanding December 31, 1955*
Funded Loan 1881	$ 19,400
Funded Loan 1891	18,700
Funded Loan 1907	343,000
Funded Loan 1881 (Continued)	50
Loan 1904	13,000
3 percent Loan 1908-18	98,340
4 percent Loan 1925	8,550
2 percent Consols 1930	10,000
2 percent Panama Canal 1916-36	60
2 percent Panama Canal 1918-38	20
3 percent Conversion Bonds 1946	100
2½ percent Postal Savings Bonds (Series 1-49)	2,203,800

It is obviously important to all persons holding such bonds, just as it is important to the Commissioner of Internal Revenue, that this Court reach a final decision as to the meaning of the tax exemption clause. Absent such a decision any lawyer who reads the legislative history of the tax exemption clause and the opinion of the court below will inevitably reach the conclusion that the question of the meaning of the tax exemption clause is yet to be finally decided. Only this Court can provide such a final decision. The time to provide that decision is now.

This petition for a writ of certiorari should be granted.

Dated: May 22, 1959.

Respectfully submitted,

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(Appendices Follow)

Appendix A

In the United States Court of Claims

No. 539—53

(Decided March 4, 1959)

A. Crawford Greene and Wells Fargo Bank & Union Trust Co., a Corporation, as Executors, etc. v. The United States

OPINION

JONES, *Chief Judge*, delivered the opinion of the court:

Plaintiffs[1] seek a refund of taxes in the amount of $1,113,937.37, plus interest thereon, which amount was assessed and paid by reason of the inclusion of certain United States 3% Panama Canal loan bonds in the gross estate of the decedent for Federal estate tax purposes. Plaintiffs base their claim on the ground that the plain language of the statute authorizing the issuance of these bonds and the language on the face of the bonds provide a broad and comprehensive tax exemption which necessarily includes Federal estate taxes.

These Panama Canal bonds were authorized by the act of August 5, 1909 (36 Stat. 11, 117), which provided in section 39 that:

> * * * the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authority * * *.

On the face of the bonds appears the following language:

> The principal and interest are exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, Municipal or local authority. * * *

[1] Plaintiffs herein are executors of the last will and testament of Gordon Blanding, who died September 11, 1945, and trustees of the trust created by the last will and testament of said decedent.

Plaintiffs argue that "all taxes" means all taxes, including Federal estate taxes; that "duties" is a term of art which includes Federal estate taxes, and that certain case law relied upon by the Government is either distinguishable or in error.

The Government construes the phrase "all taxes" to mean all taxes on the bonds themselves, and contends that the Federal estate tax is not a tax upon the property comprising the estate but is a tax upon the right to transfer such property at death. The language of section 810 of the Internal Revenue Code of 1939 which imposes a tax upon "the transfer of the net estate of every decedent", and case law support of the Government's contention.

The earliest cases on this problem were *Plummer v. Coler*, 178 U.S. 115, and *Murdock v. Ward*, 178 U.S. 139, both decided in 1900. *Plummer* held that a Federal exemption "from taxation in any form by or under State, municipal or local authority" did not exempt certain 1870 Federal bonds from a State inheritance tax. Plaintiffs analyze *Plummer* as involving solely a constitutional problem, to wit, whether the right to regulate the passage of property at death is strictly within the powers reserved to the States, and as holding that the Federal Government cannot limit that power.

Murdock v. Ward, supra, held that a Federal exemption from "all taxes and duties of the United States" did not exempt these 1870 bonds from the 1898 Federal inheritance tax. Plaintiffs urge that the case is distinguishable because it involved an inheritance tax, a tax upon the right of the legatee or devisee to receive the property of the erstwhile owner, and not an estate tax which is a tax on one of the attributes of ownership: i.e., the right to transfer one's property. Plaintiffs take the position that the Supreme

Court, in *Murdock v. Ward*, *supra*, erred in placing reliance upon the *Plummer* case, which involved primarily a constitutional issue. In both cases, the rationale relied upon by the Supreme Court was that the inheritance tax was not a tax upon the bonds themselves, but a tax upon the transfer of the bonds. Plaintiffs urge that, in any event, the Supreme Court decided *Murdock v. Ward*, *supra*, erroneously because it failed to look to the legislative history of the 1870 bonds to see what Congress meant when it exempted the bonds from "all taxes or duties of the United States." Both parties in the present litigation rely upon that same legislative history, and we shall discuss it later in this opinion.

Subsequent to the decisions in *Plummer* and *Murdock*, *supra*, the rationale that certain taxes, such as estate or gift taxes, are not taxes upon the property but merely taxes upon the right to transfer the property has been followed. *U.S. Trust Co. v. Helvering*, 307 U.S. 57 (1939); *Hamersley v. United States*, 83 C. Cls. 687 (1936); *Waud v. United States*, 71 C. Cls. 567 (1931); *Chase Nat. Bank v. United States*, 278 U.S. 327 (1929); *Greiner v. Lewellyn*, 258 U.S. 384 (1922); *New York Trust Co v. Eisner*, 256 U.S. 345 (1921).

This distinction is clearly stated in the case of *U.S. Trust Co. v. Helvering*, *supra*, passing on whether the proceeds of a war risk insurance policy payable to the widow on the veteran's death should be included in his gross estate for estate tax purposes, from which we quote, at page 60, the following:

> * * * Exemptions from taxation do not rest upon implication.
>
> An estate tax is not levied upon the property of which an estate is composed. It is an excise imposed upon the transfer of or shifting in relationships to property at death. The tax here is no less an estate tax because the proceeds of the policy were paid by the

Government directly to the beneficiary; the taxing power was nevertheless exercised upon "the transfer of property procured through expenditures by the decedent with the purpose, effected at his death, of having it pass to another." In an analogous situation, federal bonds exempt by statute from all taxation have been held subject to a federal inheritance tax. And state inheritance taxes can be measured by the value of federal bonds exempted by statute from state taxation in any form.

The plaintiffs also insist that the holding in *Murdock v. Ward*, *supra*, has been qualified and limited in the case of *Oklahoma Tax Commission v. United States*, 319 U.S. 598 (1943), and in *Landman v. United States*, 103 C. Cls. 199 (1945). A careful reading of these decisions will show clearly that they were exceptions to the general rule and are not applicable to the instant case. They involve tax-exempt Indian land. Indians being wards of the Government, an entirely different and more liberal rule applies to them.

The only other exception involves tax exemptions for aliens. The legislative history shows that Congress did not intend to subject alien holders of the exempt bonds to Federal estate taxes. *Jandorf's Estate v. Commissioner*, 171 F. 2d 464 (1948); *Pennsylvania Co. for Banking & Trusts v. United States*, 185 F.2d 125 (1950).

As plaintiffs point out, no case involving these Panama Canal bonds has been decided and none of the cases cited would be controlling if we could find that Congress, in enacting the tax exemption provision in these Panama Canal bonds, did, in fact, intend to relieve the bonds from Federal estate taxes. In support of its argument that such was the intention of Congress, plaintiffs maintain (1) that the legislative history of the prototype of the exemption provision

here involved shows such an intention, and (2) that the historical background of the word "duties" shows that the word refers to "death duties" such as estate taxes and that therefore Congress in using that word intended to exempt these bonds from the payment of estate taxes.

The legislative history of the statute authorizing the issuance of the Panama Canal bonds is, as both parties concede, unenlightening as to the particular issue involved here. By way of analogy the parties rely upon the legislative history accompanying the act of July 14, 1870 (16 Stat. 256), which authorized the first issue of Federal bonds exempt from "all taxes and duties of the United States," and which exemption provision is the prototype of the exemption clause involved in this suit. The exemption clause in the 1870 act was the provision construed by the Supreme Court in *Murdock v. Ward*, *supra*; and it is this same legislative history which plaintiffs claim was not considered by the Supreme Court in reaching what the plaintiffs assert was an erroneous result in that case.

When the 1870 tax exemption provision was introduced in Congress, there was vigorous opposition to it. Debate on the measure was only in terms of the income tax. See 41 Cong. Globe pp. 1877-1880; 5021-5025. Plaintiffs say that the mention of the income tax was merely for purposes of illustration, and that Congress intended to make these bonds free of all taxes, of whatever nature and however levied, and that this tax exemption was absolute. These 1870 bonds were issued at the beginning of a period when the Government's method of financing the public debt was to issue bonds at a low interest rate, but with a tax exemption to insure marketability and to make the bonds attractive to prospective purchasers.

Whether Congress in 1870 thought that it had to make, and did make, these bonds tax free in the absolute sense con-

tended for by plaintiffs is the question for the court to decide. The language of the exemption does not require such an absolute exemption, unless "duties" is a term of art necessarily including Federal estate taxes, an argument which we will discuss later in this opinion. The language of the exemption does not give a clear answer; the legislative history also fails to provide a clear-cut answer to the question of the legislative intention. It is possible that the reference to income tax during the debates was merely for purposes of illustration, as plaintiffs suggest; but it was stated during the debates that the only tax which could apply to these bonds would be the income tax, because otherwise the tax would be a direct tax and would have to be apportioned. See 44 Cong. Globe 1591.

Plaintiffs say the debate shows that Congress thought it was surrendering all rights to tax in reference to these bonds. The language of the debates gives such a general impression, but that general language is colored and limited by the frequent references to income taxes as the sole tax which could be imposed upon these bonds. The Government says that if Congress had intended to exclude the inheritance tax from the scope of the 1870 exemption, it would have said so in view of the fact that there was then on the books a Federal inheritance tax law. However, that inheritance tax law was repealed by the act of July 14, 1870 (16 Stat. 256, 257), such repeal to become effective October 1, 1870. Although the Federal inheritance tax law was not effectively wiped off the statute books until October 1870, Congress had decided to repeal it, and there was no reason to discuss its applicability to the bond issue, but neither can we draw any conclusion from the failure to discuss the Federal inheritance tax as plaintiffs would have us do.

For all practical purposes, there was in existence at the time of the 1870 bond issue no Federal inheritance tax and certainly no Federal estate tax law. The first estate tax law was not imposed until the act of 1916 (39 Stat. 756).

The situation in the case of the Panama Canal bonds and the Federal estate tax is somewhat analogous to the situation of the Liberty Loan bonds and the Federal gift tax. The Liberty Loan bonds (second and third issues) were exempted "from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority." Act of April 24, 1917, 40 Stat. 35, 31 U.S.C. § 746. At the time these Liberty Loan bonds were issued, there was not and had never been a gift tax. Congress was apparently aware of the problem of estate and inheritance taxes and expressly excluded them from the scope of the tax exemption.

When the Federal gift tax law was later enacted, holders of the Liberty Loan bonds urged that the bonds were not subject to the gift tax, because Congress had expressly excluded only estate and inheritance taxes from the scope of the exemption. However, this court and the Tenth Circuit held that such bonds were not subject to estate or inheritance taxes in the first place and that the exception to the exemption added nothing; i.e., that estate and inheritance taxes were not taxes upon the bonds in the first instance and therefore expressly excluding such taxes from the scope of the tax exemption did not, under the rule of *expressio unius est exclusio alterius*, show an intent to exempt the bonds from the gift tax. *Hamerslough v. United States*, *supra*; *Phipps v. Commissioner of Internal Revenue*, 91 F. 2d 627 (1937).

In the case of the Panama Canal bonds we look to the legislative history of the prototype exemption clause found in the 1870 act. Congress in 1898 enacted a Federal in

heritance tax law, and the Supreme Court, in *Murdock v. Ward, supra*, found that the 1870 tax-exempt bonds were subject to the 1898 inheritance tax. The conclusion reached in that decision was that the inheritance tax was not a tax on the bonds but a tax upon the right to transfer the bonds. We do not believe that the Supreme Court reached that decision by confusing the constitutional issue of the *Plummer* case, as plaintiffs suggest, and we do not think that the Supreme Court overlooked any legislative history which would have pointed conclusively to a different result. It is this same legislative history which this court is now examining; i.e., the legislative history of the 1870 act.

Our problem becomes more complicated when it is remembered that this same language of the 1870 act was adopted in the 1909 act without comment, and without any indication that the *Murdock* decision might have changed the original meaning of that exemption clause. Plaintiffs say there is no reasonable ground for a court to conclude that Congress when it adopted the exemption clause in 1909 had in mind the interpretation placed upon that clause by the Supreme Court in the *Murdock v. Ward, supra*, decision. They claim there was no indication that the Congress was aware of that decision. On the other hand, we have no basis for finding that Congress was unaware of that decision. A parallel is found in the provision for issuing the Liberty Loan bonds in which the question of gift taxes was not mentioned. But since the Federal gift tax is not a tax on the bonds as such, the failure to expressly exclude such taxes did not have the effect of making such gift taxes exempt. The same conclusion would logically follow in construing a similar clause applying to estate taxes.

The second argument which plaintiffs advance to support their theory that Congress intended to exempt the Panama Canal bonds from Federal estate taxes is the argument that

the word "duties" as used in the exemption provision refers to death duties such as Federal estate taxes, and therefore the use of that word shows that Congress intended to exempt Federal estate taxes. Historically, the term "duties" was frequently used when referring to "death duties" such as inheritance taxes. This is shown in the discussion of the history of such taxes or duties in *Knowlton v. Moore*, 178 U.S. 41 (1900). However, from 1861 to 1866 income taxes were referred to as income "duties".[2] After 1870 the use of the term "duties" when referring to income taxes appears to have been dropped. Plaintiffs urge that when speaking of "death duties" such as inheritance taxes or estate taxes, the Congress always used the phrase "duties or taxes" or "taxes or duties".[3]

However, the word "duties" has frequently been used by the Congress, the courts, and lawbook writers to mean taxes such as probate duties, income duties, and similar taxes. It is often used in reference to imports or customs. At any rate the use of that term alone, without further explanation, does not show a legislative intention to exempt the bonds from all death duties, including Federal estate taxes.

It is equally possible that Congress was using the term "duties" as being synonymous with the term "taxes". There is support for that view when we consider that up to about 1870 Congress also used the term "duties" when referring to income taxes, and in the act of July 13, 1866 (14 Stat. 98), Congress provided that whenever the word "duty" appeared in the income tax law it was to be construed to mean "tax".

[2]See act of August 5, 1861, 12 Stat. 292; act of July 1, 1862, 12 Stat. 432; act of March 3, 1863, 12 Stat. 713; act of June 30, 1864, 13 Stat. 223; act of March 3, 1865, 13 Stat. 469; act of July 13, 1866, 14 Stat. 98.

[3]See act of July 6, 1797, 1 Stat. 527; act of July 1, 1862, 12 Stat. 432, 485; act of June 30, 1864, 13 Stat. 223, 286; act of July 13, 1866, 14 Stat. 98, 140; act of June 13, 1898, 30 Stat. 448.

Thus Congress expressly equated the two terms, and it is quite likely that the use of both "taxes" and "duties" in the exemption clause meant no more than the word "taxes" alone would mean, and that its use was merely a vestigial clinging to the old and meaningless term.

This interpretation is strengthened when we consider that the use of the phrase "taxes or duties" in the 1870 bonds was held in *Murdock v. Ward*, *supra*, and we believe correctly so, not to prevent the imposition of one type of death duties; i.e., inheritance taxes. There seems to be no compelling reason to conclude that the use of that same phrase would prevent the imposition of the type of death duties involved in this litigation; i.e., Federal estate taxes. Tax exemptions are normally to be construed narrowly, and are not to be found by implication. *United States v. Stewart*, 311 U.S. 60 (1940); *U.S. Trust Co. v. Helvering*, *supra*; *Merchants Nat. Bank of Mobile v. United States*, 93 C. Cls. 464 (1941).

We hold that the words "taxes" and "duties" as used in the statute involved in the instant case and as used in the bonds issued thereunder were meant by the Congress to exempt the principal and interest of such bonds from taxes levied by the United States, as well as taxes levied by any State, municipality, or local authority, and were not intended and did not have the effect of exempting a decedent's gross estate from estate taxes, which are a tax not upon the property itself, but upon the transfer or shifting of ownership of such property.

Plaintiffs' petition will be dismissed.

It is so ordered.

LARAMORE, *Judge*; and WHITAKER, *Judge*, concur.

MADDEN, *Judge*, concurring in the result.

I concur in the decision because I think we are not free to inquire as to the intent of Congress, in view of the Supreme Court decisions discussed in the opinion of the court.

FINDINGS OF FACT

The court makes findings of fact, based upon the stipulation of the parties, and the briefs and argument of counsel, as follows:

1. Gordon Blanding died in the city and county of San Francisco, State of California, on the 11th day of September 1945, and at the time of his death was a resident of said city and county and left estate therein.

2. Said decedent left a will dated June 15, 1940, and six codicils thereto, all of which were duly admitted to probate as his last will and testament on October 3, 1945, by order of the Superior Court of the State of California in and for the city and county of San Francisco.

3. Plaintiffs above named, A. Crawford Greene and Wells Fargo Bank & Union Trust Co., since December 20, 1954, known as Wells Fargo Bank, were nominated by said last will and testament as co-executors thereof and as co-trustees of the trust therein created. By order of said Superior Court, plaintiffs were duly appointed as co-executors on October 3, 1945, and qualified as such on said date. Letters testamentary were issued to said plaintiffs on October 3, 1945, and ever since said date plaintiffs have been and now are the duly appointed, qualified and acting executors of the last will and testament of said decedent.

4. Among the assets of said decedent which came into the possession of plaintiffs as such executors were certain United States 3% Panama Canal loan bonds dated June 1, 1911, and due June 1, 1961, with an aggregate par value of $1,432,600. Said bonds were issued pursuant to provisions of section 39 of the act of Congress of August 5, 1909 (36 Stat. 117), as amended by the acts of Congress of February 4, 1910 (36 Stat. 192), and March 2, 1911 (36 Stat. 1013). Said section 39 provides in part:

> * * * the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authority. * * *

Each of said Panama Canal loan bonds, issued pursuant to said statute, which was owned by said decedent at the date of his death, and which constituted a part of his estate, on its face contained the following provision:

> The principal and interest are exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, Municipal or local authority.

5. On December 11, 1946, plaintiffs, as executors of the last will and testament of said decedent, filed a Federal estate tax return with the Collector of Internal Revenue at San Francisco, California, on behalf of said decedent's estate. As Item 139 of Schedule B in said estate tax return, plaintiffs listed said Panama Canal loan bonds, but plaintiffs did not include said bonds as a part of decedent's gross estate subject to tax, and by way of explanation stated on the face of said estate tax return as follows:

> Note: The value of these bonds and accrued interest thereon is excluded from taxation herein pursuant to the tax exemption clause contained in each bond as follows: "The principal & interest are exempt from all taxes or duties of the U.S. as well as from taxation in any form by or under State, Municipal or local authorities.

6. Subsequently, on January 16, 1947, plaintiffs, as executors of the last will and testament of said decedent, filed an amended estate tax return with said Collector, in which return, as Item 139 of Schedule B, both the principal of and accrued interest to date of death on said Panama Canal

loan bonds were included as a part of decedent's gross estate subject to tax. Said plaintiffs attached to the amended estate tax return a letter addressed to the Collector dated January 14, 1947, insisting upon their claim that said Panama Canal loan bonds and the accrued interest thereon to date of death were not subject to estate tax, and stating that the reason for inclusion of said Panama Canal loan bonds as a part of said decedent's gross estate was merely to stop the running of interest, and that plaintiffs reserved the right to challenge taxability of said bonds by a claim for refund and suit or other appropriate proceeding to recover the taxes attributable to said bonds.

7. At the time when plaintiffs filed said Federal estate tax return on December 11, 1946, plaintiffs, as executors, paid to said Collector the sum of $3,518,563.59, the estate tax shown due on said return. At the time when plaintiffs filed said amended estate tax return on January 16, 1947, plaintiffs, as executors, paid to said Collector the additional sum of $1,113,594.34 principal and $6,482.23 interest. Said sum of $1,113,594.34 was the additional sum due by reason of inclusion of said Panama Canal loan bonds and accrued interest thereon to date of death in decedent's estate; and said sum of $6,482.23 was interest on $1,113,594.34 from December 11, 1946, the date on which the estate tax was due, to January 16, 1947, the date of payment.

8. On July 14, 1948, plaintiffs, as executors of the last will and testament of said decedent, paid an additional estate tax in the amount of $42,053.45 plus interest thereon in the amount of $4,022.73 from December 11, 1946, the date on which said tax was due, to July 14, 1948, the date on which said tax was paid. Thereafter plaintiffs were allowed a credit of $10,513.36 in connection with the additional tax previously mentioned. This credit, of which plaintiffs were

advised by the Commissioner of Internal Revenue in a letter dated November 23, 1948, was attributable to allowance for State inheritance taxes paid. The aforementioned payment of additional tax and interest and the subsequent credit in connection therewith were occasioned by issues not involved in the present claim.

9. By Decree of Final Distribution duly made, signed and entered on December 14, 1948, by order of the Superior Court of the State of California in and for the city and county of San Francisco, all the rest, residue and remainder of the estate of said decedent was distributed to plaintiffs as trustees of the trusts created by the last will and testament of Gordon Blanding, deceased; and said rest, residue and remainder so distributed to plaintiffs as such trustees, by the terms of Paragraph IV of the seventh clause of said Decree of Final Distribution, expressly included all rights to or claims for refunds of estate taxes.

10. Within three years after payment of the estate tax on decedent's estate as aforesaid and on December 5, 1949, plaintiffs, as such executors and trustees, filed with the Collector of Internal Revenue at San Francisco, California, their claim for refund of Federal Estate tax on Treasury Department Form 843. The total estate tax paid on behalf of said decedent's estate was $4,674,211.38, and said claim was for the refund of $1,141,094.46 plus interest as provided by law.

11. $1,113,937.37 of the $1,141,094.46 for which said claim for refund was filed, is that portion of the estate tax paid by reason of the inclusion in said decedent's gross estate of the aforesaid Panama Canal loan bonds with interest accrued thereon to date of death. The difference between $1,113,594.34, the amount of the additional estate tax paid on January 16, 1947, attributable to said Panama Canal

loan bonds, and accrued interest thereon to date of death (as set forth in finding 7) and $1,113,937.37, the amount for which a claim for refund was filed on account of the inclusion of said bonds and such accrued interest thereon in decedent's gross estate, is due to adjustments made on audit of decedent's amended estate tax return subsequent to January 16, 1947, which adjustments resulted in the application of a higher estate tax rate to the assets of decedent's estate.

12. On January 15, 1951, the Internal Revenue Agent in Charge at San Francisco, California, acting on behalf of the Collector of Internal Revenue, submitted to plaintiffs, as such executors and trustees, a proposed adjustment of said claim for refund, providing for a refund of $27,157.09, exclusive of interest, on account of matters not at issue in this case, and rejecting plaintiffs' claim insofar as it related to said Panama Canal loan bonds.

13. Within thirty days from the date of the submission of said proposed adjustment to plaintiffs, and on February 7, 1951, plaintiffs, as such executors and trustees, submitted to the Internal Revenue Agent in Charge their protest to said proposed adjustment of claim for refund.

14. By letter dated September 27, 1951, the Commissioner of Internal Revenue notified plaintiffs, pursuant to the provisions of Section 3772(a)(2) of the Internal Revenue Code of 1939 that their claim for refund of $1,141,094.46 had been disallowed except to the extent of an allowance made on Schedule of Overassessments, numbered IT-170700. Plaintiffs had been previously advised of this allowance in the total amount of $29,754.87 plus interest of $5,578.02 by a Certificate of Overassessment, and plaintiffs received a refund in the amount of such allowance. The said amount

of $29,754.87 represented $27,157.09 of estate tax and $2,597.78 of interest thereon theretofore paid by plaintiffs. No part of such allowance or refund related to issues involved in the present claim. The difference between $1,141,094.46, the total amount of plaintiffs' claim for refund, and said refund of estate tax of $27,157.09, or $1,113,937.37, is the amount of estate tax paid by plaintiffs by reason of the inclusion in decedent's net taxable estate of the subject Panama Canal bonds and interest accrued thereon to date of decedent's death.

15. Within two years from the date of mailing said notice of allowance by the Collector of Internal Revenue, and on September 22, 1953, this proceeding was filed in this court to recover $1,113,937.37, the amount of plaintiffs' claim for refund which had been disallowed by the Collector, with interest thereon as allowed by law.

16. The only issue of United States bonds containing an exemption from "taxes or duties of the United States" which has at the date hereof not matured or been called and on which interest is still being paid is the 3% Panama Canal bonds of 1911-1961. On October 31, 1956, the amount of these bonds outstanding was $49,800,000.00. All other issues of bonds which carry an exemption from "taxes or duties of the United States" have now ceased to earn interest either pursuant to call or because of maturity. The following list describes and gives the outstanding amount on November 20, 1956, of each issue of United States bonds which contains an exemption from "taxes or duties of the United States":

Loan	*Amount outstanding December 31, 1955*
Funded Loan 1881	$19,400.00
Funded Loan 1891	18,700.00
Funded Loan 1907	343,000.00
Funded Loan 1881 (Continued)	50.00
Loan of 1904	13,000.00
3 percent Loan 1908-18	98,340.00
4 percent Loan 1925	8,550.00
2 percent Consols 1930	10,000.00
2 percent Panama Canal 1916-36	60.00
2 percent Panama Canal 1918-38	20.00
3 percent Conversion Bonds 1946	100.00
2½ percent Postal Savings Bonds (series 1-49)	2,203,800.00

17. In 1939 Gordon Blanding made an irrevocable gift in trust of $1,000,000 par value 3% Panama Canal bonds of 1911-1961 for the benefit of his daughter, Henriette de Saussure Goodrich. On April 19, 1940, Gordon Blanding filed a Federal gift tax return on which he declared this transfer as subject to a gift tax of $287,347.71 which amount was duly paid. Neither Gordon Blanding, his estate, nor anyone acting for or on behalf of either has ever filed a claim of any type for the refund of said gift tax.

18. Plaintiffs, by virtue of the aforesaid decree of distribution in the estate of said decedent and by operation of law, on December 14, 1948, as trustees of the trusts created by the last will and testament of said decedent, succeeded to all the rights to recover and to claim refund of Federal estate taxes assessed and collected against said decedent's estate by virtue of the inclusion of the aforesaid Panama Canal loan bonds therein. Except for said transfer by operation of law and by virtue of said decree of distribution, there has been no assignment or transfer of the right to recover or to claim refund of said Federal estate tax, or any part thereof. Plaintiffs, as such trustees, were at the date of

filing of this action, and ever since said date have been, and now are the sole owners of all of said right to recover and to claim refund of said Federal estate taxes assessed and collected against said decedent's estate by reason of the inclusion of said Panama Canal loan bonds therein.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiffs are not entitled to recover, and the petition is therefore dismissed.

Appendix B

78379

1911 1961

THE UNITED STATES OF AMERICA
is indebted to GORDON BLANDING
..... or assigns
in the sum of One Thousand Dollars.

This bond is issued under authority of section 39 of an act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States and for other purposes" approved August 5, 1909, and amended by the acts approved February 4, 1910, and March 2, 1911, and is payable fifty years from June 1, 1911, in United States gold coin of the present standard of value, with interest at the rate of three per centum per annum payable quarterly in such coin on the first day of September, December, March and June in each year. The principal and interest are exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, Municipal or local authority. This bond shall not be receivable by the Treasurer of the United States as security for the issue of circulating notes to national banks.

Washington, D.C., June 1, 1911

Transferable on the Books of the
United States Treasury Department
Date of issue May 15 1936 Entered F.S. Recorded H.J.H.

J. C. NAPIER
Register of the Treasury

78379

THREE PERCENT PANAMA CANAL LOAN

LE COPY

Office Supreme Court, U.S.
FILED
JUN 24 1955
JAMES R. BROWNING, Clerk

No. 956

In the Supreme Court of the United States

OCTOBER TERM, 1955

A. CRAWFORD GREENE and WELLS FARGO BANK & UNION TRUST CO., a corporation, as Executors Under the Last Will and Testament of Gordon Blanding, Deceased, and as Trustees of the Trusts Created Under said Last Will and Testament and by Decree of Final Distribution of The Estate of Said Decedent Dated December 14, 1948, PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 956

A. CRAWFORD GREENE and WELLS FARGO BANK & UNION TRUST CO., a corporation, as Executors Under the Last Will and Testament of Gordon Blanding, Deceased, and as Trustees of the Trusts Created Under said Last Will and Testament and by Decree of Final Distribution of The Estate of Said Decedent Dated December 14, 1948, PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1-18) is reported at 171 F. Supp. 459.

JURISDICTION

The judgment of the Court of Claims was entered on March 4, 1959. (Pet. App. 1.) The petition for a writ of certiorari was filed on May 28, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1255.

QUESTION PRESENTED

Whether this Court's decision in *Murdock* v. *Ward*, 178 U.S. 139, holding that tax-exempt United States bonds are properly includible in a decedent's gross estate for purposes of the federal inheritance tax, should be overruled.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—
>
> (a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;
>
> * * * *
>
> (26 U.S.C. 1952 ed., Sec. 811.)

STATEMENT

The undisputed facts are set forth in the findings of fact of the Court of Claims (Pet. App. 11-18) and may be summarized as follows:

Petitioners are the co-executors and testamentary trustees of the estate of Gordon Blanding, who died on September 11, 1945. Among the assets of the decedent were certain United States 3% Panama Canal loan bonds dated June 1, 1911, and due June 1, 1961. (Pet. App. 11.) These bonds were issued pursuant to the provisions of Section 39 of the Act of August 5, 1909, as supplemented by the Act of February 4, 1910 (Appendix, *infra*, pp. 9-10), which provides in relevant part as follows:

> * * * the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority * * *.

Each of the bonds, on its face, contained the following provision (Pet. App. 12):

> The principal and interest are exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, Municipal or local authority.

During his lifetime (in 1939), the decedent made an irrevocable gift of $1,000,000 of par value of these bonds to his daughter and paid the federal gift tax thereon. (Pet. App. 17.)

Other of the bonds, in the amount of $1,432,600, were owned by the decedent at the date of his death and constituted a part of his estate. (Pet. App. 11.) However, petitioners, contending that the bonds were exempt from the federal estate tax by reason of the tax exemption clause, did not initially include their value in the decedent's gross estate. They did so

later, under protest, and paid the estate tax due thereon. (Pet. App. 12-13.) After a timely claim was denied by the Collector, this suit for refund was instituted. (Pet. App. 16.) The Court of Claims held for the United States. (Pet. App. 18.)

ARGUMENT

Whether the value of the Panama Canal bonds owned by the decedent is includible in his gross estate under Section 811(a) of the Internal Revenue Code of 1939 (*supra*, p. 2) depends upon whether the tax exemption clause of the 1909 statute which authorized the issuance of the bonds [1] extends to the federal estate tax. The clause, which exempts the "bonds * * * from all taxes or duties of the United States", is in substantially the same language as the exemption clause contained in an 1870 statute [2] considered by this Court in *Plummer* v. *Coler*, 178 U.S. 115, and *Murdock* v. *Ward*, 178 U.S. 139, cases involving State and Federal inheritance taxes. In those cases, this Court unequivocally held that the 1870 exemption clause did not confer an exemption from inheritance tax, because such a tax is imposed upon the right to receive the bonds rather than on the bonds themselves. The federal estate tax involved here is similarly a tax upon the *transfer* of property at death. See 1939 Code, Section 810, 26 U.S.C. 1952 ed., Section 810; *United States Trust Co.* v. *Helvering*, 307 U.S. 57. Petitioners, apparently conceding that *Murdock* is controlling here, assert that the decision

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[1] Section 39 of the Act of August 5, 1909, as supplemented by the Act of February 4, 1910, Appendix, *infra*, pp. 9-10.

[2] Act of July 14, 1870, c. 256, 16 Stat. 272, Section 1.

"is simply wrong" (Pet. 12) and "ought to be overruled" (Pet. 13).[3] We believe that the long-standing construction of the relevant statutory provisions should not now be overturned.

It is argued that in *Murdock* the Court failed to consider the legislative history of the 1870 statute, and that this history actually shows that Congress intended the bonds to be free of death duties.[4] (Pet. 6-10.) But, as both the opinion below (Pet. App. 5-6, 8) and petitioner's own discussion of the legislative history (Pet. 7-9) show, there was no persuasive legislative history, one way or the other, for the Court to consider. The history of the 1870 exemption clause involved in *Murdock* discloses no clear-cut intention in relation to the application of inheritance taxes, but reflects only a specific purpose to exempt from income taxation.[5]

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[3] It may be noted that the decedent-purchaser of the bonds, himself a lawyer, apparently did not believe he had contracted for exemption from transfer taxes, since he paid gift taxes on the value of other bonds of the same type without protest. The same is true of innumerable other taxpayers who have paid transfer taxes on tax-exempt bonds since the *Murdock* rule was established.

[4] There is concededly no helpful legislative history on the 1909 statute authorizing the Panama Canal bonds involved here. (Pet. App. 5.)

[5] While general statements that there would be exemption from all taxes were made on the floor (Pet. 8-9), it was also stated by three Senators that the only tax involved was the income tax. 41-2 Cong. Globe, Part 2, pp. 1591, 1878, 1879. Thus, Senator Sherman (reporting the measure) said that "The bonds of the United States cannot be subjected to national taxation except in one form, and that is the tax on income" (p. 1591); Senator Bayard, that "the

The history of later tax-exemption statutes, together with the decisions construing them, confirms the *Murdock* rule. *Murdock* was decided in 1900. The statute authorizing issuance of the Panama Canal bonds involved here was enacted in 1909. It cannot be assumed that, in enacting that statute, Congress was unaware of a decision as important as *Murdock*. Furthermore, the provisos in later statutes expressly excepting inheritance and estate taxes from the exemption were held to be merely statutory enactments of the *Murdock* rule. *Phipps* v. *Commissioner*, 91 F. 2d 627 (C.A. 10th), certiorari denied, 302 U.S. 742; *Hamersley* v. *United States*, 16 F. Supp. 768 (C.Cls.), certiorari denied, 300 U.S. 659, rehearing denied, 302 U.S. 774. Only where the courts have found plain, affirmative evidence that Congress intended to extend exemption to inheritance and estate taxes has such a claim been allowed. *Jandorf's Estate* v. *Commissioner*, 171 F. 2d 464 (C.A. 2d); *Pennsylvania Co. for Banking & Trusts* v. *United States*, 185 F. 2d 125 (C.A. 3d). *Jandorf's Estate*, upon which petitioners rely (Pet. 13), expressly recognized (171 F. 2d, p. 467) that "a provision exempting United States bonds from taxation as to principal and interest, *without more*, relates exclusively to direct taxation of them as property". (Original italics.)[6]

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only tax to which these bonds would be susceptible would be the income tax" (p. 1878); and Senator Corbett, that "The only advantage that they give this bond is by freeing it from that income tax" (p. 1879).

[6] By Section 604 of the Revenue Act of 1951, c. 521, 65 Stat. 452, Congress reversed *Jandorf* and provided for the inclusion of federal bonds in the taxable estates of non-

Petitioners also challenge *Murdock* because it was decided upon the basis of a distinction between direct and indirect taxes. (Pet. 12.) But the statutory exemption, by its express language, applies only to all taxes on *the bonds*. The justification for the distinction is thus implicit in the statute, which, like all exemption statutes, is to be strictly construed.

The distinction, moreover, is a basic one to which this Court has steadily adhered. Thus, a tax, other than a direct tax on property, may be measured by taking into account property which is itself tax-exempt. *United States* v. *City of Detroit*, 355 U.S. 466, 471; *United States Trust Co.* v. *Helvering*, 307 U.S. 57. The *Murdock* principle supports the constitutionality of the federal estate tax (*Knowlton* v. *Moore*, 178 U.S. 41; *New York Trust Co.* v. *Eisner*, 256 U.S. 345) and permits a state to impose an inheritance tax measured by the value of federal bonds included in the estate, even though a state is constitutionally prohibited from imposing a tax on the bonds themselves and even though federal statute makes the bonds exempt from any form of state taxation (*Plummer* v. *Coler*, 178 U.S. 115). And see *Pacific Co.* v. *Johnson*, 285 U.S. 480, holding that the tax exemption for municipal bonds granted by the California Constitution was not impaired by a privilege tax measured by the net income from the tax-exempt municipal bonds.

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resident aliens, on the ground that such "obligations * * * should be subject to the principle of *Murdock* v. *Ward* and *Plummer* v. *Coler*". H. Rep. No. 586, 82d Cong., 1st Sess., p. 139 (1951-2 Cum. Bull. 357, 457); S. Rep. No. 781, 82d Cong., 1st Sess., p. 86 (1951-2 Cum. Bull. 458, 519-520).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUNE, 1959

APPENDIX

Act of August 5, 1909, c. 6, 36 Stat. 11:

> Sec. 39. That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures on account of the Panama Canal and to reimburse the Treasury for such expenditures already made and not covered by previous issues of bonds, the sum of two hundred and ninety million five hundred and sixty-nine thousand dollars (which sum together with the eighty-four million six hundred and thirty-one thousand nine hundred dollars already borrowed upon issues of two per cent bonds under section eight of the Act of June twenty-eighth, nineteen hundred and two, equals the estimate of the Isthmian Canal Commission to cover the entire cost of the Canal from its inception to its completion), and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of one hundred dollars, five hundred dollars, and one thousand dollars, payable fifty years from the date of issue, and bearing interest payable quarterly in gold coin at a rate not exceeding three per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: * * *.

Act of February 4, 1910, c. 25, 36 Stat. 192:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any bonds and certifi-

cates of indebtedness of the United States hereafter issued shall be payable, principal and interest, in United States gold coin of the present standard of value; and that such bonds may be issued in such denominations as may be prescribed by the Secretary of the Treasury.

Sec. 2. That any certificates of indebtedness hereafter issued shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under state, municipal, or local authority; and that a sum not exceeding one-tenth of one per centum of the amount of any certificates of indebtedness issued is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expenses of preparing, advertising, and issuing the same.

Sec. 3. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

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